

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**CHERYL ANN JONES,**

**Plaintiff,**

**- against -**

**THE CITY OF NEW YORK,  
POLICE OFFICER ROBERT O'BRIEN,  
SGT. DWIGHT SMITH,  
and DETECTIVE EBONY HUNTLEY,**

**Defendants.**

**AMENDED COMPLAINT**

**Civ. No. 07 CV 5625**

**PLAINTIFF DEMANDS  
A TRIAL BY JURY**

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Plaintiff, by his attorney, CARMEN S. GIORDANO, complaining of Defendants, respectfully allege:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action pursuant to 42 U.S.C. §1983 *et. seq.* for an incident of malicious prosecution and deprivation of protected rights, including rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, which transpired on or about March 3, 2007, when law enforcement officers employed by THE NEW YORK CITY POLICE DEPARTMENT used excessive force, assaulted, wrongfully detained, arrested and falsely imprisoned Plaintiff CHERYL ANN JONES and further maliciously prosecuted him in New York County, New York.

2. On March 3, 2007, at approximately 8:30 p.m. in the vicinity of Dean Street between Nostrand and Rofers, Kings County, State of New York, Defendant CITY OF NEW YORK, POLICE OFFICER ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY, without probable cause or justification, assaulted, beat and arrested Plaintiff as she was peacefully and lawfully walking along the sidewalk at the aforementioned

location. She was stopped by plain clothes police officers, accosted, forcibly grabbed, thrown to the ground, struck, injured, handcuffed and arrested.

3. After Plaintiff was accosted and attacked as described, Defendants placed her under arrest without having probable cause to do so. Plaintiff was held custody for several hours without medical care.

4. Defendants caused Plaintiff to suffer physical and emotional damages. The resulting injuries have precluded Plaintiff from participating in the normal activities and enjoyment of her life.

5. Thereafter, and without probable cause, Defendants further detained and then maliciously prosecuted Plaintiff in New York State Criminal Court until such charges were ultimately dismissed.

#### **JURISDICTION AND VENUE**

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 in that this action arises under 42 U.S.C. §1983 *et. seq.*, and the Fourth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §1367 and the doctrine of pendent jurisdiction, since the state claims arise from the same operative facts and are part of the same case or controversy.

7. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b) and (c) because Defendant THE CITY OF NEW YORK resides in this District. Additionally, all Defendants are subject to personal jurisdiction in this District.

8. Prior to the commencement of this action, and within ninety days after the instant claim arose, Plaintiff caused a Notice of Claim in writing to be served upon the Defendant THE CITY OF NEW YORK, by delivering to and leaving the same with the New York City

Comptroller's Office, in like manner as the service of a summons in the District Court, which said Notice of Claim set forth the name and post office address of the Plaintiff and his attorney, the nature of, time when, place where, and manner in which the claims arose, and the items of damage and/or injuries claimed, or that might have been sustained, so far as it was practicable. Over thirty days have elapsed since the service of such Notice of Claim and the THE CITY OF NEW YORK has failed to settle or adjust this matter.

9. This action was commenced within one year and ninety days after the cause of action herein accrued.

#### **THE PARTIES**

10. At all relevant times, Plaintiff is and was a resident of Brooklyn, New York.

11. At all times relevant hereto, THE CITY OF NEW YORK, POLICE OFFICER ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY, acted in their official capacities, and were employees, agents, or servants of the Defendant THE CITY OF NEW YORK, acting under color of state law, within the meaning of 42 U.S.C. §1983 *et. seq.*

12. Defendant THE CITY OF NEW YORK was and is a municipal corporation organized and existing under and pursuant to the laws of the State of New York. At all relevant times, Defendant THE CITY OF NEW YORK acted through its employees, agents and/or servants, including the individually named Defendants herein, who at all relevant times acted within the course and scope of their employment.

**AS AND FOR A FIRST CLAIM PURSUANT TO 42 U.S.C. §1983 BY  
PLAINTIFF AGAINST THE CITY OF NEW YORK, POLICE OFFICER  
ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY**

13. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

14. On or about March 3, 2007, Defendants THE CITY OF NEW YORK, POLICE OFFICER ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY,, acting intentionally, recklessly and/or with a deliberate indifference to the rights, life and liberty of Plaintiff CHERYL ANN JONES, assaulted and caused physical and mental injuries to Plaintiff.

15. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. §1983 *et. seq*, and deprived Plaintiff of rights secured by the Constitution and laws of the United States and the State of New York including those rights protected by the Fourth and Fourteenth Amendments to the U.S. Constitution, their right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

16. As a result of the foregoing, Plaintiff was caused to suffer bodily injury, loss of liberty, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

**AS AND FOR A SECOND CLAIM PURSUANT TO 42 U.S.C. §1983 BY PLAINTIFF  
PLAINTIFF AGAINST THE CITY OF NEW YORK, POLICE OFFICER ROBERT  
O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY**

17. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

18. On or about March 3, 2007 Defendants POLICE OFFICER ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty

of Plaintiff CHERYL ANN JONES, falsely arrested and imprisoned Plaintiff.

19. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. §1983 *et. seq*, and deprived Plaintiff of rights secured by the Constitution and laws of the United States including those rights protected by the Fourth and Fourteenth Amendments, their right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

20. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, loss of liberty and life, substantial physical, emotional and psychological pain, and was otherwise injured.

**AS AND FOR A THIRD CLAIM PURSUANT TO 42 U.S.C. §1983 BY PLAINTIFF  
AGAINST THE CITY OF NEW YORK, POLICE OFFICER ROBERT O'BRIEN, SGT.  
DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY**

21. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

22. On or about March 3, 2007, Defendants THE CITY OF NEW YORK, POLICE OFFICER ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY, acting intentionally, maliciously and without justification or probable cause, caused to be filed an accusatory instrument and otherwise brought criminal charges against Plaintiff, who was criminally prosecuted therefore until such charges were dismissed and terminated in her favor.

23. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. §1983 *et. seq*, and deprived Plaintiff of rights secured by the Constitutions and laws of the United States and the State of New York including those rights protected by the Fourth and

Fourteenth amendments, her right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitution of the United States and the State of New York.

24. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.

**AS AND FOR A FOURTH “*MONELL*” CLAIM PURSUANT TO 42 U.S.C.  
§1983 BY PLAINTIFF AGAINST  
THE CITY OF NEW YORK**

25. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

26. The aforesaid conduct of the individual Defendants was occasioned and conducted pursuant to, and was the result of, the unconstitutional customs, usages, practices and/or policies of Defendant THE CITY OF NEW YORK, including a failure to train, supervise, and discipline the individual Defendants herein.

27. As a result of the foregoing, Defendants, in violation of 42 U.S.C. §1983 thereby deprived Plaintiff of rights secured by the Constitution and laws of the United States, including the Fourth and Fourteenth Amendments to the U.S. Constitution and laws of the State of New York.

28. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, loss of liberty and life, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

**AS AND FOR A FIFTH CLAIM FOR SUPERVISORY LIABILITY  
PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF  
AGAINST THE CITY OF NEW YORK, POLICE OFFICER ROBERT O'BRIEN, SGT.  
DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY**

29. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

30. By his conduct in failing to remedy the wrongs committed by and in failing to properly train, supervise, or discipline POLICE OFFICER ROBERT O'BRIEN, SGT. DWIGHT SMITH, and DETECTIVE EBONY HUNTLEY, Defendant CITY OF NEW YORK caused damage and injury in violation of Plaintiff's rights guaranteed under 42 U.S.C. §§ 1981 and 1983, and the Fourth and Fourteenth Amendments to the United States Constitution.

31. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

**AS AND FOR A SIXTH CLAIM FOR ASSAULT AND BATTERY  
BY PLAINTIFF AGAINST ALL DEFENDANTS**

32. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

33. As a result of the foregoing, Defendants intentionally placed Plaintiff in apprehension of imminent harmful contact, and Defendants, in a hostile manner, and without the consent of Plaintiff, intentionally caused harmful bodily contact with Plaintiff as described herein.

34. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

**AS AND FOR A SEVENTH CLAIM FOR FALSE ARREST  
BY PLAINTIFF AGAINST ALL DEFENDANTS**

35. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. On or about March 3, 2007, Defendants, acting without probable cause, intentionally and falsely arrested and imprisoned Plaintiff.

37. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, loss of liberty and life, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

**AS AND FOR AN EIGHTH CLAIM FOR MALICIOUS PROSECUTION  
BY PLAINTIFF AGAINST ALL DEFENDANTS**

38. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

39. On or about March 3, 2007, Defendants, acting intentionally, maliciously and without justification or probable cause, caused to be filed an accusatory instrument or otherwise brought criminal charges against Plaintiff who was criminally prosecuted therefore until such prosecution was terminated in her favor.

40. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.



**WHEREFORE**, Plaintiff demands the following relief jointly and severally against all of the Defendants:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empaneling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York  
August 15, 2007

Yours, etc.,

Law Office of Carmen S. Giordano  
***Attorney for Plaintiff***

By:  
Carmen S. Giordano (CSG-3927)  
225 Broadway, 40<sup>th</sup> Floor  
New York, NY 10007  
(212) 406-9466